

REMARKS

Amendments to claims 32-36 and 40 are for the purpose of clarifying what Applicants regard as the invention. No new matter has been added.

I. Objection to the Specification

The specification stands objected to because the specification allegedly does not provide antecedent basis for the limitation “computer program product” in claims 32, 33, and 36. As an initial matter, Applicants respectfully note that the term “computer program product” was presented in the original claims that were filed with the subject application. Since the original claims themselves are considered part of the specification, Applicants respectfully request that the objection to the specification be withdrawn.

Also, Applicants note that the meaning of the term “computer program product” is clear to one skilled in the art in view of the disclosure of the subject application. For example, paragraphs 43-49 of the subject application describe different embodiments of computer components (which are products) that may be associated with a computer program. For these additional reasons, Applicants respectfully request that the objection to the specification be withdrawn.

II. Claim Rejections under 35 USC § 101

Claims 34, 35, and 40 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Without acquiescence to the basis of the rejections set forth in the Office Action, these claims have been amended to recite a “processor,” thereby tying the claimed subject matter to a statutory class, and rendering the § 101 rejection moot.

III. Claim Rejections under 35 USC § 102

Claims 1-9, 11, and 13-66 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,691,067 (Ding). Applicants respectfully note that in order to sustain a claim rejection under § 102, each of the claimed elements must be found, either expressly or inherently, in the cited reference.

Claims 1, 14, 32-36, 40, and 54

A. Ding does not disclose or suggest executing the workload on a single node before the workload is sent to a plurality of nodes for execution.

Claim 1 recites executing *the workload* on a single node before *the workload* (i.e., the same workload executed on the single node) *is sent to a plurality of nodes for execution* (Emphasis Added). Claims 14, 32-36, 40, and 54 recite similar limitations. According to the Office Action, column 6, lines 14-32 of Ding allegedly disclose the above limitations. However, the cited passage of Ding actually describes an enterprise management system 180 for monitoring, analyzing, and managing resource usage on “heterogeneous computer systems 150 across the enterprise 100” (c6:24-27). As described in Ding, the computer programs for the enterprise management system 180 itself may be executed on “one or more computer systems” (c6:14-18). However, the “computer programs” themselves for the enterprise management system 180 cannot be considered to be the claimed “workload.” This is because Ding specifically describes that the computer programs for the enterprise management system 180 be either run on either “one *or* more computer systems.” There is nothing in Ding that discloses or suggests that after the computer programs for the enterprise management system 180 are executed in a single node, the same computer programs are sent to a plurality of nodes for execution.

For at least the foregoing reasons, Applicants submit that the prima facie case of the § 102 rejection has not been established, and request that the § 102 rejection be withdrawn.

B. Ding does not disclose or suggest tracing the execution of the workload to identify a potential data conflict, wherein the potential data conflict comprises a potential conflict in the data.

Claim 1 also recites tracing the execution of the workload to identify a potential data conflict, *wherein the potential data conflict comprises a potential conflict in the data* (Emphasis Added). Claims 14, 32-36, 40, and 54 recite similar limitations. Ding also does not disclose or suggest such limitations. According to the Office Action, column 6, lines 28-42 of Ding disclose collecting and monitoring “metric data.” However, according to Ding, “a metric is a measurement of a particular system resource. For example, in the preferred embodiment, the

enterprise management system 180 collects metrics such as CPU, disk I/O, file system usage, database usage, threads, processes, kernel, registry, logical volumes, and paging” (c6:36-41). Thus, the metric data in Ding is a measure of system resource, and is clearly not a conflict in data (much less, a “potential” conflict in data).

For these additional reasons, Applicants submit that the prima facie case of the § 102 rejection has not been established, and request that the § 102 rejection be withdrawn.

C. Ding does not disclose or suggest predicting the behavior of the workload across the plurality of nodes based on a result of the tracing.

Claim 1 also recites that based on a result of the tracing, predicting the behavior of the workload across the plurality of nodes. Claims 36 and 40 recite similar limitations. Ding also does not disclose or suggest such limitations. According to page 4 of the Office Action, column 7, lines 6-15, and column 11, lines 11-32 of Ding allegedly disclose the above limitations. Applicants respectfully traverse. The cited passage in column 11 of Ding actually describes that “Predict 408 is a planning tool which forecasts the impact of hypothetical changes on elements of the enterprise 100 such as disparate hardware, software, applications, and databases.” Thus, Ding describes forecasting an impact based on a hypothetical change on elements of the enterprise – i.e., not based on a result of tracing a workload to identify potential data conflict.

For these additional reasons, Applicants submit that the prima facie case of the § 102 rejection has not been established for claims 1, 36, and 40, and request that the § 102 rejection be withdrawn for these claims.

D. Ding does not disclose or suggest based on a result of the tracing, forming a workload distribution scheme that distributes the workload across the plurality of nodes.

Claim 14 recites based on a result of the tracing, forming a workload distribution scheme that distributes the workload across the plurality of nodes. Claims 33 and 34 recite similar limitations. Ding also does not disclose or suggest such limitations. According to page 7 of the Office Action, column 11, lines 11-32, and column 21, lines 53-67 of Ding allegedly disclose the above limitations. However, the cited passages of Ding actually describe altering the “configuration of the enterprise” based on a determined “utilization.” Because Ding describes

changing the enterprise configuration based on resource “utilization,” Ding does not disclose or suggest forming a workload distribution scheme based on a result of tracing an execution of workload to identify potential data conflict, as described in the claims.

For these additional reasons, Applicants submit that the prima facie case of the § 102 rejection has not been established for claims 14, 33, and 34, and request that the § 102 rejection be withdrawn for these claims.

D. Ding does not disclose or suggest based on a result of the tracing, optimizing the distribution of the workload across the plurality of nodes.

Claim 32 recites based on a result of the tracing, optimizing the distribution of the workload across the plurality of nodes. Claim 35 recites similar limitations. Ding also does not disclose or suggest such limitations. According to page 11 of the Office Action, column 7, lines 6-15, and column 11, lines 11-32 of Ding allegedly disclose “predicting the behavior of the workload across the plurality of nodes.” However, Applicants wish to clarify that claims 32 and 35 do not recite “predicting the behavior of the workload across the plurality of nodes.” Rather, these claims recite “optimizing the distribution of the workload across the plurality of nodes” based on a result of the tracing, which is not disclosed or suggested in Ding.

For these additional reasons, Applicants submit that the prima facie case of the § 102 rejection has not been established for claims 32 and 35, and request that the § 102 rejection be withdrawn for these claims.

Claims 2, 37, 41, 55, 60, and 65

Claim 2 recites that the act of identifying potential data conflicts comprises predicting *how many* data conflicts will occur (Emphasis Added). Claims 37, 41, 55, 60, and 65 recite similar limitations. Ding also does not disclose or suggest such limitations. According to page 4 of the Office Action, column 7, lines 37-67, and column 11, lines 11-32 of Ding allegedly disclose the above limitations. However, the cited passages of Ding actually discloses constructing a so-called “baseline model” from data regarding “performance statistics such as workload response times, utilization, and throughputs at CPUs, disks, networks, and other elements.” However, as similarly discussed, the performance data in Ding does not include any

conflict in data. Thus, Ding clearly does not disclose or suggest predicting *how many* data conflicts will occur.

For these additional reasons, Applicants submit that the prima facie case of the § 102 rejection has not been established for claims 2, 37, 41, 55, 60, and 65, and request that the § 102 rejection be withdrawn for these claims.

Claims 3, 38, 42, 56, 61, and 66

Claim 3 recites that the act of identifying potential data conflicts comprises *predicting types* of data conflicts (Emphasis Added). Claims 38, 42, 56, 61, and 66 recite similar limitations. Ding also does not disclose or suggest such limitations. According to page 5 of the Office Action, column 11, lines 11-54 of Ding allegedly disclose the above limitations. However, as similarly discussed, the cited passage of Ding actually discloses performance metrics, which are not conflict in data. Thus, Ding clearly does not disclose or suggest predicting *types* of data conflicts.

For these additional reasons, Applicants submit that the prima facie case of the § 102 rejection has not been established for claims 3, 38, 42, 56, 61, and 66, and request that the § 102 rejection be withdrawn for these claims.

CONCLUSION

If the Examiner has any questions or comments regarding this response, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OID-2000-017-01**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OID-2000-017-01**.

Respectfully submitted,

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